

(Do not write above this line.)

State Bar Court of California Hearing Department Los Angeles REPROVAL			PUBLIC MATTER
Counsel For The State Bar Anand Kumar Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1000 Bar # 261592	Case Number(s): 11-C-19478	For Court use only <div style="font-size: 24pt; font-weight: bold; margin-bottom: 10px;">FILED</div> <div style="font-size: 18pt; font-weight: bold; margin-bottom: 5px;">MAY 10 2012</div> <div style="font-size: 12pt; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>	
In Pro Per Respondent Brian J. Baker 1103 Johnson Ave., Suite D San Luis Obispo, CA 93401 (805) 602-2914 Bar # 257228	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PUBLIC REPROVAL <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
In the Matter of: Brian J. Baker Bar # 257228 A Member of the State Bar of California (Respondent)			

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted August 1, 2008.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 11 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(Effective January 1, 2011)



- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Costs are added to membership fee for calendar year following effective date of discipline (public reproof).
 - Case ineligible for costs (private reproof).
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.
- (9) The parties understand that:
- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** [see standard 1.2(f)]
- (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline

- (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline.
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See attachment.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. Respondent has cooperated with the State Bar by entering into a stipulated settlement for the matter described herein without the need of a trial.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.

- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation. At the time of the arrest leading to the conviction referral proceedings in this matter, Respondent was suffering from an alcohol relapse and he has since taken subsequent steps to prevent a future relapse by spending eight months at a sober living facility and becoming more actively involved in AA.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Respondent was admitted to the Washington State Bar in 2003 and admitted to the California State Bar in 2008. Respondent has no prior record of California or Washington state bar discipline.

D. Discipline:

- (1) **Private reproof (check applicable conditions, if any, below)**
- (a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).
- or
- (2) **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproof:

- (1) Respondent must comply with the conditions attached to the reproof for a period of one (1) year.
- (2) During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and

conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reprobation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reprobation during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 (thirty) days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the condition period and no later than the last day of the condition period.

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the reprobation.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason:
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reprobation.
- No MPRE recommended. Reason:

- (11) The following conditions are attached hereto and incorporated:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

Attachment language (if any):

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Brian J. Baker

CASE NUMBERS: 11-C-19478

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the facts are true and that he is culpable of the violations of the statutes and/or Rules of Professional Conduct specified herein.

Case No. 11-C-19478 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDINGS:

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.
2. On May 5, 2010, Respondent pled no contest and was convicted of violating California Vehicle Code, section 23152, subdivision (b) for driving a vehicle with a blood-alcohol level of .08% or more on December 24, 2009.
3. On February 2, 2012, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department on the following issues: For a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the misdemeanor violation of Vehicle Code, section 23152, subdivision (b) (driving with a blood-alcohol level of .08% or more), of which Respondent was convicted, involved moral turpitude or other misconduct warranting discipline.

FACTS:

4. At approximately 4 p.m. on December 24, 2009, a San Luis Obispo County CHP officer was stopped at an intersection in one of two left-turn lanes, when he observed Respondent's vehicle approach the CHP vehicle from behind while driving on the rim of a flat right front tire before suddenly swerving into the second left-turn lane next to the CHP vehicle.
5. The CHP officer positioned his vehicle behind Respondent's car and activated the red front lights. Once the stoplight turned green, Respondent made a left turn with speed causing sparks but did not slow down or yield despite the flat tire.

6. The CHP officer activated the emergency lights and siren, however Respondent continued to drive away and made a right turn onto another local street before ultimately slowing down, stopping in a lane of traffic and then turning off his car.
7. The CHP officer approached Respondent's vehicle and asked Respondent to lower his window, which Respondent was unable to do because the car ignition was not on, so the CHP officer asked Respondent to open his front door. The officer asked Respondent if he knew that he had a flat tire and he responded affirmatively.
8. After the officer asked for Respondent's license, Respondent began fumbling around his ashtray and made several attempts to place his car in drive. Respondent was uncooperative in answering questions, so the CHP officer requested a second unit.
9. The CHP officer smelled alcohol coming from inside Respondent's vehicle. When asked if he had anything to drink, Respondent stated "nothing." Respondent was unable to provide registration or proof of insurance to the CHP officer.
10. The CHP officer asked Respondent to exit the vehicle, which Respondent initially refused to do. After stepping onto the sidewalk with much difficulty, Respondent was asked to perform field sobriety tests, which he refused.
11. Respondent admitted that he had been drinking vodka and stated repeatedly that he was "sorry" at which point the officer could smell alcohol emanating from Respondent's breath.
12. The officer then placed Respondent under arrest and blood sample was taken from Respondent at the San Luis Obispo Police station, which showed that Respondent had a .29% blood-alcohol level at the time.
13. On January 5, 2010, a misdemeanor complaint was filed against Respondent in San Luis Obispo County Superior Court.
14. Respondent was previously convicted of driving under the influence of alcohol, a misdemeanor violation of Vehicle Code, section 23152, subdivision (a) in San Luis Obispo County on October 30, 2000. Consequently, on May 5, 2010, Respondent was convicted of a misdemeanor violation of Vehicle Code, section 23152, subdivision (b), driving a vehicle with a blood-alcohol level of .08% or more with a prior.
15. On May 5, 2010, imposition of sentence was suspended and Respondent was sentenced to 45 days of county jail, placed on summary probation for 36 months; ordered to pay all fines and fees, to enroll in a DWI second offenders program, not to drive with blood-alcohol content level exceeding a .00% and obey all laws. Respondent has subsequently served his jail sentence, paid all restitution and fines, and enrolled in and has partially completed the DWI second offenders program (scheduled to be completed in June 2012).

CONCLUSION OF LAW:

Respondent's misdemeanor conviction for violating Vehicle Code, section 23152, subdivision (b) (driving a vehicle with a blood-alcohol level of .08% or more with a prior) constitutes other misconduct warranting discipline.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was April 12, 2012.

AGGRAVATING CIRCUMSTANCES.

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.

Standard 1.2(b) provides for a greater degree of sanction set forth in the standards where aggravating circumstances exist. Under *Standard 1.2(b)(iv)*, Respondent's misconduct evidences that he harmed the public and administration of justice, because he did not immediately yield and continued to drive with a blood alcohol level of .29% at the time the CHP officer activated the siren and emergency lights of the CHP vehicle. His misconduct also indicates that Respondent was uncooperative with the CHP officer's investigative questioning, including making several attempts to put his car in drive necessitating an additional unit on scene.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 3.4 provides that a final conviction of a member which does not involve moral turpitude, but does involve other misconduct warranting discipline shall result in a sanction as prescribed under part B of the *Standards*. Accordingly, *Standard 2.6(a)* holds that a willful violation of *Business and Professions Code*, section 6068(a) shall result in disbarment or suspension, depending on the gravity of the offense or the harm.

C. Applicable Case Law:

In fashioning the appropriate level of discipline, the Standards are the starting point. Consideration must also be given to whether the recommended discipline is consistent with prior decisions of the California Supreme Court and the Review Department of the State Bar Court.

A second alcohol-related conviction for driving under the influence is conduct warranting discipline—a public reproof. *In re Kelley* (1990) 52 Cal.3d 487. In *Kelley*, the Supreme Court publicly reproofed an attorney and ordered her to comply with certain disciplinary conditions for three years, including conditions to address her use of alcohol, despite finding that attorney Kelley had significant mitigation. Her blood alcohol content in the second incident was tested at .16% and .17%. Here, Respondent's blood alcohol level was tested at .29% and his actions indicated he did not immediately yield to the CHP officers and continued driving causing a further threat to the public. As stated in another conviction referral matter, "[t]he fact that respondent's drunk driving did not result in serious

injury or death to another was merely fortuitous. It does not render the respondent's conduct any less serious." *In re Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 215. Similarly, the public danger created by driving with a blood alcohol level of .29% coupled with a prior driving under the influence conviction show why Respondent's conviction in this matter constitutes other misconduct warranting discipline.

Accordingly, Respondent should be publicly reprovved for one (1) year with standard conditions including compliance with the terms of his criminal probation.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of April 12, 2012, the prosecution costs in this matter are approximately \$2,287.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: Brian J. Baker	Case Number(s): 11-C-19478
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Substance Abuse Conditions

- a. Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.
- b. Respondent must attend at least 8 meetings per month of:
- Alcoholics Anonymous
 - Narcotics Anonymous
 - The Other Bar
 - Other program

As a separate reporting requirement, Respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the tenth (10th) day of the following month, during the condition or probation period.

- c. Respondent must select a license medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the Respondent's expense, a screening report on or before the tenth day of each month of the condition or probation period, containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously.
- d. Respondent must maintain with the Office of Probation a current address and a current telephone number at which Respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of Respondent's blood or urine within twelve (12) hours. For good cause, the Office of Probation may require Respondent to deliver Respondent's urine and/or blood sample(s) for additional reports to the laboratory described above no later than six hours after actual notice to Respondent that the Office of Probation requires an additional screening report.
- e. Upon the request of the Office of Probation, Respondent must provide the Office of Probation with medical waivers and access to all of Respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:

(Do not write above this line.)

In the Matter of: Brian J. Baker	Case number(s): 11-C-19478
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

April 23, 2012		Brian J. Baker
Date	Respondent's Signature	Print Name
N/A		N/A
Date	Respondent's Counsel Signature	Print Name
April 30, 2012		Anand Kumar
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: Brian J. Baker	Case Number(s): 11-C-19478
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REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

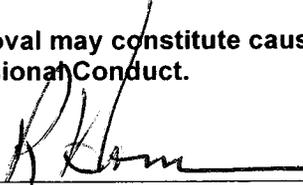
- The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Date

5/7/12


RICHARD A. HONN
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on May 10, 2012, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND
ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

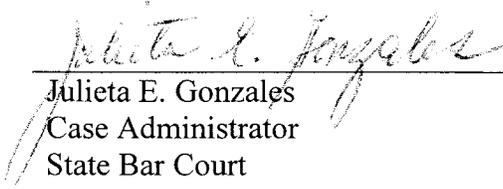
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

BRIAN J BAKER ESQ
1103 JOHNSON AVE
SUITE D
SAN LUIS OBISPO, CA 93401

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Anand Kumar, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 10, 2012.



Julieta E. Gonzales
Case Administrator
State Bar Court